

**IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER**

<b>IN THE MATTER OF:</b>  <b>SCHNOEBELEN, INC.</b> Riverside, Iowa	<b>ADMINISTRATIVE CONSENT ORDER</b> <b>NO. 2009-AQ- 01</b> <b>NO. 2009-SW- 02</b> <b>NO. 2009-WW- 02</b>
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TO: Ralph Schnoebelen  
Schnoebelen, Inc.  
430 East 4<sup>th</sup> St.  
Riverside, IA 52327

**I. SUMMARY**

This administrative consent order is entered into between the Iowa Department of Natural Resources (Department) and Schnoebelen, Inc. for the purpose of resolving an issue pertaining to the open burning of combustible materials, improper solid waste disposal, and storm water permitting violations. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Questions regarding this administrative consent order should be directed to:

**Relating to technical requirements:**

Ryan Stouder  
Field Office #6  
Iowa Department of Natural Resources  
1023 W. Madison  
Washington, Iowa 52327  
Phone: 319-653-2135

**Relating to legal requirements:**

Jon Tack  
Legal Services Bureau  
Iowa Department of Natural Resources  
502 East 9<sup>th</sup> Street  
Des Moines, Iowa 50319  
Phone: 515-281-5145

**Payment of penalty to:**

Director of the Iowa DNR  
Wallace State Office Building  
502 East Ninth Street  
Des Moines, Iowa 50319-0034

**II. JURISDICTION**

This administrative consent order is issued pursuant to the provisions of Iowa Code sections 455B.134(9) and 455B.138(1) which authorize the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division II (air quality), and the rules promulgated or permits issued pursuant to that part;

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Iowa Code section 455B.175(1) which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division III, Part 1 (water quality), and the rules adopted pursuant to that part; Iowa Code section 455B.307(2) which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division IV, Part 1 (solid waste), and the rules adopted pursuant to that part; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties.

**III. STATEMENT OF FACTS**

1. Schnoebelen, Inc. owns and operates a business located at 430 East 4<sup>th</sup> Street in Riverside, Iowa. Schnoebelen, Inc. has engaged in metal salvage or motor vehicle salvage operations.

2. On August 17, 2007, the Department investigated a complaint alleging illegal open burning at the Schnoebelen, Inc. facility. The inspection revealed multiple areas of illegal burning, including the burning of tires. It was determined that salvaging was occurring but the necessary storm water permit had not been obtained. Violations were documented in regard to illegal solid waste disposal and illegal waste tire storage in addition to the open burning and storm water permit violations.

3. On August 17, 2007, the Department issued a Notice of Violation to Schnoebelen, Inc. The Notice informed Schnoebelen, Inc. of the applicable regulations and directed Schnoebelen, Inc. to:

- Submit a storm water application form by September 1, 2007 or remove and properly dispose of/recycle all appliances and other recyclable materials by September 1, 2007.
- Submit copies of receipts documenting proper disposal of all solid waste by October 1, 2007.

4. Based upon subsequent inspection of the property, it was determined that storm water permit coverage was no longer needed due to the removal of solid waste and salvageable materials.

**IV. CONCLUSIONS OF LAW**

1. Iowa Code section 455B.133 provides that the Environmental Protection Commission (Commission) shall establish rules governing the quality of air and emission standards. The Commission has adopted 567 IAC chapters 20-34 relating to air quality.

2. 567 IAC 23.2 states that no person shall allow, cause, or permit open burning of combustible materials except as provided in subrules 567 IAC 23.2(2) (variances) and 567 IAC 23.2(3) (exemptions). The burning documented in this matter does not fall under

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567 IAC 23.2(2) exemptions and the burning of trade wastes is specifically prohibited. The above facts demonstrate a violation of this provision.

3. Iowa Code section 455B.307 and 567 IAC 100.4 prohibit a private or public agency from dumping or depositing or allowing the dumping or depositing of any solid waste at any place other than a sanitary disposal project approved by the Director. The Department has documented violations of these provisions by Schnoebelen, Inc.

4. Iowa Code section 455B.173(3) authorizes the Commission to adopt rules relating to the operation of and issuance of permits to waste disposal systems. Iowa Code section 455B.103A authorizes the issuance of general permits for storm water discharges. The Commission has adopted regulations pertaining to the issuance of National Pollutant Discharge Elimination System (NPDES) permits for storm water discharge, at 567 IAC 60.2 and 64.3 through 64.16. Pursuant to rule 60.2, "Storm water discharge associated with industrial activity" means the discharge from any conveyance which is used for collecting and conveying storm water and which is directly related to manufacturing, processing or raw materials storage areas at an industrial plant." Number 6 under this definition includes "Facilities involved in the recycling of materials, including metal scrap yards, battery reclaimers, salvage yards, and automobile junkyards, including, but not limited to, those classified as Standard Industrial Classifications 5015 and 5093."

5. Subrule 64.4(2) provides that the Director may issue general permits which are consistent with 64.4(2)"b" and the requirements specified in 64.6(455B), 64.7(455B), 64.8(2), and 64.9(455B) for the following activities: (1) Storm water point sources requiring an NPDES permit pursuant to Section 402(p) of the federal Clean Water Act and 40 CFR 122.26 (as amended through June 15, 1992). Subrule 64.15(1) adopts Storm Water Discharge Associated with Industrial Activity, NPDES General Permit No. 1. Subrule 64.6(2) provides that upon the submittal of a complete Notice of Intent in accordance with 64.6(1) and 64.3(4)"b," the applicant is authorized to discharge, unless notified by the Department to the contrary. Subrule 64.3(1) provides that no person shall operate any wastewater disposal system or part thereof without, or contrary to any condition of, an operation permit issued by the Director. The above-stated facts disclose a violation of these provisions.

**V. ORDER**

THEREFORE, the Department orders and Schnoebelen, Inc. agrees to pay an administrative penalty in the amount of \$1,000 at the time of execution of this administrative consent order.

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**VI. PENALTY**

1. Iowa Code section 455B.146 authorizes the assessment of civil penalties of up to \$10,000 per day of violation for each of the air quality violations involved in this matter. More serious criminal sanctions are also available pursuant to Iowa Code section 455B.146A. Iowa Code section 455B.191 authorizes the assessment of civil penalties of up to \$5,000 per day of violation for the storm water violations involved in this matter. Iowa Code section 455B.307(3) authorizes the assessment of civil penalties of up to \$5,000 per day of violation for the solid waste disposal violations involved in this matter.

2. Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000, which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties in 567 IAC chapter 10. Pursuant to these rules, the Department has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an order with an administrative penalty of \$4,750. The administrative penalty is determined as follows:

Economic Benefit – Schnoebelen, Inc. has achieved an economic benefit from the violations documented herein. The illegal open dumping and open burning of solid waste results in the avoidance of time, labor and disposal costs. While costs were eventually incurred for the disposal of the remaining solid waste, an economic benefit remained due to the material that had been illegally burned. The avoided costs associated with proper disposal amount to at least \$250. Therefore, \$250 is assessed for this factor.

Gravity – The improper disposal and burning of trade waste, including tires, releases harmful toxins into the air such as carbon monoxide, dioxin/furans, hydrochloric acid, volatile organic compounds, heavy metal and fine particulate. Open dumping also impacts the environment, the character of the neighborhoods, and the quality of life of local residents. The open burning and improper solid waste disposal violations threaten the integrity of the environmental regulations. Therefore, \$900 is assessed for this factor.

Culpability – Schnoebelen, Inc. engaged in activities resulting in violations across multiple program areas. The conditions observed on August 17, 2007 included violations with respect to Iowa's air, water, and solid waste programs. The pervasiveness of these violations indicated a disregard for human health and the environment. Therefore, \$850 is assessed for this factor.

Mitigating or Aggravating Factors – Schnoebelen, Inc. addressed the documented violations in a timely manner. Based upon this response and the Department's delay in imposing this administrative penalty, the penalty assessed herein is reduced by \$1,000.

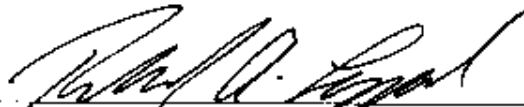
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**VII. WAIVER OF APPEAL RIGHTS**

This administrative consent order is entered into knowingly and with the consent of Schnoebelen, Inc. For that reason Schnoebelen, Inc. waives its rights to appeal this administrative consent order or any part thereof.

**VIII. NONCOMPLIANCE**

Failure to comply with this administrative consent order, including failure to timely pay any penalty, may result in the imposition of further administrative penalties or referral to the attorney general to obtain injunctive relief and civil penalties pursuant to Iowa Code sections 455B.146, 455B.175 and 455B.307. Compliance with Section "V. Order" of this administrative consent order constitutes full satisfaction of all requirements pertaining to the specific violations described in Section "IV. Conclusions of Law" of this administrative consent order.

  
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RICHARD A. LEOPOLD, DIRECTOR  
Iowa Department of Natural Resources

Dated this 29 day of  
Jan., 2009.

  
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RALPH SCHOEBELEN, INC.

Dated this 20 day of  
January, 2009.

Jon Tack; Dan Stipe; V.L.C; VII.C.1